

Complaint

IN THE MATTER OF

NORTH AMERICAN PHILIPS CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-1941. Complaint, June 8, 1971—Decision, June 8, 1971.

Consent order requiring a New York City manufacturer and distributor of transistorized radios to cease overstating the number of transistors in its transistorized radios.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that North American Philips Corporation, a corporation, hereinafter referred to as respondent, has engaged in acts and practices contrary to the Commission's Trade Regulation Rule relating to Deception as to Transistor Count in Radio Receiving Sets, Including Transceivers (16 CFR 414) and by this and other means has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent North American Philips Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 100 East 42nd Street, New York, New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacturing of transistorized radios and distributing these radios to wholesale and retail purchasers for resale to the purchasing public.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes, and for some time last past has caused, its products, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, respondent has

Complaint

78 F.T.C.

made representations in advertisements and other promotional materials and on labels attached to the radios concerning the number of transistors contained in the radios manufactured and distributed by it in the United States in the manner above described.

PAR. 5. In the course and conduct of its business, respondent has made representations in advertisements and other promotional materials and on labels attached to the radios concerning the number of "Solid State" devices contained in the radios manufactured and distributed by it and thereby represents, directly or by implication, that a particular set so described contains that number of transistors.

PAR. 6. In representing the number of transistors or "Solid State" devices contained in its radios, respondent has included in the count, transistors that do not perform the recognized and customary functions of radio set transistors in the detection, amplification and reception of radio signals.

PAR. 7. On May 14, 1968, after due notice and hearing, the Commission promulgated its Trade Regulation Rule relating to Deception as to Transistor Count of Radio Receiving Sets, Including Transceivers (16 CFR 414), effective December 10, 1968. On the basis of its findings, as set out in the "Accompanying Statement of Basis and Purpose" of the said Trade Regulation Rule, the Commission determined that it constitutes an unfair method of competition and an unfair and deceptive act or practice to:

Represent, directly or by implication, that any radio set contains a specified number of transistors when one or more of such transistors: (1) are dummy transistors; (2) do not perform the recognized and customary functions of radio set transistors in the detection, amplification and reception of radio signals; or (3) are used in parallel or cascade applications which do not improve the performance capabilities of such sets in the reception, detection and amplification of radio signals.

PAR. 8. Notice is hereby given that the presentation of evidence in the course of a hearing in this proceeding may be required to dispose of the issues that may arise as a result of the allegations contained in Paragraphs One through Seven herein, and that if the issues presented as a result of the allegations contained in those paragraphs should be resolved in substantiation of such allegations, then the above Trade Regulation Rule is relevant to the alleged practices of the respondent. Therefore, the respondent is given further notice that it may present evidence, according to Section 1.12(c) of the Commission's Procedures and Rules of Practice, to show that the above Trade Regulation Rule is not applicable to the alleged

1169

Decision and Order

acts or practices of respondent. And if the Commission should find that the above Rule is applicable to the alleged acts or practices of the respondent, then it will proceed to make its findings, conclusions, and final order in this proceeding on the basis of that Rule. A copy of the Rule and Accompanying Statement of Basis and Purpose, marked Appendix A,¹ is attached hereto and made a part of this pleading.

PAR. 9. The aforesaid methods of competition and acts and practices of respondent, as alleged in Paragraph Eight hereof, were contrary to the provisions and requirements of the Commission's Trade Regulation Rule relating to Deception as to Transistor Count of Radio Receiving Sets, Including Transceivers (16 CFR 414), and thereby constituted, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the

¹ Appendix A was omitted in printing. Trade Regulation Rule relating to Deception as to Transistor Count of Radio Receiving Sets, including Transceivers effective December 10, 1968, appears in Title 16 of the Code of Federal Regulations Section 414.

procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent North American Philips Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 100 East 42nd Street, New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent North American Phillips Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the manufacturing, advertising, offering for sale, sale or distribution of radio receiving sets, including transceivers, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, through the use of the terms transistor or "Solid State" that any radio set contains a specified number of transistors when one or more such transistors: (1) are dummy transistors; (2) do not perform the recognized and customary functions of radio set transistors in the detection, amplification and reception of radio signals; or (3) are used in parallel or cascade applications which do not improve the performance capabilities of such sets in the reception, detection and amplification of radio signals: *Provided however*, That nothing herein shall be construed to prohibit in connection with a statement as to the actual transistor count (computed without inclusion of transistors which do not perform the functions of detection, amplification and reception of radio signals), a further statement to the effect that the sets in addition contain one or more transistors acting as diodes or performing auxiliary or other functions when such is the fact.

2. Misrepresenting, in any manner, the number of transistors in respondent's radio receiving sets and transceivers.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions engaged in the manufacturing, advertising, offering for sale, sale or distribution of radio receiving sets and transceivers.

It is further ordered, That respondent notify the Commission at least (30) days prior to any proposed change in the corporate re-

spondent relating to operating divisions or subsidiaries engaged in the manufacture, advertising, offering for sale, sale or distribution of radio receiving sets, including transceivers such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation when any such change may affect compliance obligations arising out of this order.

It is further ordered, That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

YORK RADIO CORPORATION, ET AL.